

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5681

PETITION OF PAUL AND MARILYN VAN WAGNER

(Hearing held November 28, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, December 28, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(1). The petitioners propose to construct a two-story addition that requires a 3.50 foot variance as it is within 8.50 feet of the side lot line. The required side lot line setback is twelve (12) feet.

The subject property is Lot 7, Block 3, Manor Park Subdivision, located at 14512 Faraday Drive, Rockville, Maryland, in the R-200 Zone (Tax Account No. 011240540).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a two-story addition in the northeast section of the property.
2. The petitioner testified that the property is an unusually shaped lot. The lot is narrowest in the front section, then widening from front to back. The petitioner testified that the variance is required for only the southeast corner of the proposed addition as shown on Exhibit No. 4.
3. The petitioner testified that all of the homes in the neighborhood have garages or carports and that his house is the only residence without a parking structure. The petitioner testified that the addition would have a shingled roof and would be constructed of materials to match the residence.
4. The petitioner testified that he has spoken with his neighbors and that the neighbors support his variance request.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The property is a uniquely shaped lot. The lot's dimensions widen from front to back. The Board finds that the property's exceptional shape is a condition peculiar to the lot and that the strict application of the regulations would result in practical difficulties for the property owners were the variance to be denied.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance is required for only the southeast corner of the proposed addition and that the requested variance is de minimus.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The proposed construction will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the proposed addition will be in harmony with other improvements in the neighborhood and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties. The record contains no correspondence or testimony in opposition to the variance request.

Accordingly, the requested variance of 3.50 feet from the required twelve (12) side lot line setback for the construction of a two-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(d).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Angelo M. Caputo was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 28th day of December, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.